

FOIP News

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“FOIP News” is an electronic newsletter produced by the Access and Privacy Branch, Alberta Government Services, to highlight news relating to Alberta’s *Freedom of Information and Protection of Privacy (FOIP) Act*. FOIP News is issued as needed. Web site links are provided to allow you to easily obtain more information on a news item.

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Freedom of Information and Protection of Privacy Amendment Act, 2006 - Proclaimed

The *Freedom of Information and Protection of Privacy Amendment Act, 2006* came into force on May 24, 2006.

This Act makes a number of amendments to the FOIP Act that affect the process of designating public bodies, access to records held by government ministries, and the processing of certain requests. The Amendment Act also places restrictions on the disclosure of personal information to courts that do not have jurisdiction in Alberta, and creates a new offence and penalty for such a disclosure that is not permitted under the FOIP Act. This penalty provision extends to public body employees and contractors acting on behalf of public bodies.

For more information on the amendments, *Bulletin No. 18: FOIP Amendment Act, 2006* is now available on the FOIP web site at <http://www.foip.gov.ab.ca/resources/publications/pdf/bulletin18.pdf>.

FOIP Act and Regulation

A new office consolidation of the FOIP Act and Regulation is available from the Alberta Queen's Printer. It includes all of the amendments to date, including those made to the FOIP Act and Regulation in 2006.

To purchase the new consolidation, go to www.qp.gov.ab.ca.

FOIP Website Redesigned

The FOIP Website has been given a new look and restructured to enable users to find information and documents faster and easier. Publications and other resources produced by the Access and Privacy Branch can now be located in the *Resources* section of the web site by title (*Publications A-Z*) or by topic (*Topic Listing*).

Also new are a printer-friendly feature and an enhanced search engine for searching Commissioner's decisions. The enhanced search enables users to search by type of decision, date, number, public body name, sector or keyword. Other revisions include replacing the full text and news release documents for all IPC Orders and Investigation Reports with links to the documents on the OIPC web site.

Please note that the URL for the web site has also changed. You will need to change any bookmarks you have to the FOIP Website. The new URL is www.foip.gov.ab.ca.

Forms and Guidelines for Law Enforcement Agencies

Alberta Government Services has developed two forms to assist law enforcement agencies requesting personal information from private-sector organizations. One is for disclosures within Alberta that are subject to Alberta's *Personal Information Protection Act* (PIPA). The other is for disclosures that are subject to the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA).

For more information, visit the Private Sector Privacy web site at www.psp.gov.ab.ca. The forms are found under *Resource Centre*.

Update on FOIP Publications

Consent and Authentication (FOIP Bulletin No. 17)

This new bulletin explains the provisions for consent and authentication in section 6 of the FOIP Regulation and provides guidance with respect to the policies or "rules" that public bodies must establish in order to accept consent electronically or orally.

See <http://www.foip.gov.ab.ca/resources/publications/bulletin17.cfm>.

Concordance and Legislative History of the FOIP Act

The FOIP concordance and legislative history table on the FOIP web site has been updated to reflect the recent amendments to the FOIP Act and Regulation. The table tracks changes to the FOIP Act since it received Royal Assent, and allows users to find out whether provisions interpreted in Commissioner's Orders have been renumbered or amended since an Order was issued.

See http://www.foip.gov.ab.ca/legislation/pdf/concordance_history.pdf.

Legislation Paramount over the FOIP Act

The table of legislation paramount over the FOIP Act has also been updated. The table lists those Acts and Regulations which have provisions that prevail despite the FOIP Act.

See <http://www.foip.gov.ab.ca/legislation/pdf/paramountcy.pdf>.

OIPC Orders and Investigation Reports

Since the last newsletter, the following Orders and Investigation Reports have been released by the OIPC that relate to local public bodies. Links to Orders and Investigation Reports are available on the FOIP web site.

F2004-005 & H2004-001 Calgary Health Region (released March 27, 2006)

The Applicant requested his mental health records from three hospitals in the Calgary Health Region (CHR). The CHR provided all records but withheld the names, initials, signatures, position titles, professional designations and credentials of individuals in the health, law enforcement corrections and legal systems. The CHR cited sections 11(1)(a)(ii) and 11(1)(a)(iii) of the *Health Information Act* (HIA) – disclosure reasonably expected to threaten mental or physical health or safety of other individuals and to pose a threat to public safety – in withholding the information. The CHR also argued that, if the information was not health information under the HIA, it was personal information under the FOIP Act and could be withheld under section (18)(a) – disclosure expected to threaten health or safety of someone else, or section 17 – unreasonable invasion of privacy.

The Commissioner found that the information of both CHR staff and individuals in the justice, law enforcement, corrections and legal systems was “health information” under the HIA. Because the Applicant moved between the justice and health systems, all of the information became part of the hospital records for the purpose of providing health services to the Applicant. Therefore, the Commissioner found that the CHR had properly processed the request under the HIA. He did not have to consider whether the FOIP Act applied.

The Commissioner found that the CHR properly withheld the information under section 11 of the HIA. He did not give weight to an expert opinion, which he said provided insufficient evidence to support application of the exception to access. However, the Commissioner found that the evidence in records submitted for the inquiry provided sufficient evidence to demonstrate the legitimate health and safety concerns in disclosing the information.

F2005-013 City of St. Albert (released April 12, 2006)

The Applicant made a request to the City of St. Albert for a copy of a Fisheries Inspector’s Direction. The Direction was issued to the City by Environment Canada, under the federal *Fisheries Act*. The Direction related to the discharge of a substance from a former landfill site within the City. The City withheld the record under the exception to disclosure for law enforcement (section 20). The Applicant asked the Information and Privacy Commissioner to review the City’s decision.

The City submitted that the Applicant’s right of access was under the federal *Access to Information Act*. The City also submitted that if the record were released, the resulting publicity would harm, or interfere with, an ongoing federal investigation. In addition, the City claimed that the record was used in the exercise of prosecutorial discretion.

The Adjudicator found that the Applicant could have made the request under either the federal or provincial Acts. A right of access under the federal legislation does not preclude an Applicant from making a request under provincial legislation.

While the Adjudicator agreed that the record fit the definition of law enforcement, he found that the City of St. Albert did not adequately demonstrate any specific harm that

might result from release of the record, such as substantive evidence that withholding the record was necessary to defend itself in the event the matter is heard by the courts.

The Adjudicator highlighted that the “purpose of the law enforcement exception is to ensure that legitimate law enforcement activities are not compromised. It is not to protect public bodies from public opinion and pressure when law enforcement is directed at them. Any anticipated harm must relate to the law enforcement matter and not to the public body.”

The City was ordered to disclose the record.

F2004-027 University of Alberta (released April 24, 2006)

The Applicant requested access to her personal files from the University. The University disclosed a large number of the 4,200 pages of responsive records, but withheld some on the basis of specified exceptions, and indicated that some had been destroyed.

The Applicant alleged that a record she had requested had been purposely taken off campus to avoid providing access. The Applicant also alleged that the University destroyed records before the one-year retention period required under section 35(b) of the FOIP Act had expired.

This Order provides the first consideration by the Commissioner of what is an acceptable written agreement allowing for a retention period of less than a year under section 35(b). The Applicant requested information which had been destroyed less than one year after the relevant decision was made. The collective agreement between the University and the Association of Academic Staff contains a provision allowing for the destruction of certain documents six weeks after the decision is issued. The Adjudicator found that this constituted a written agreement for the purpose of section 35(b). The Applicant was not a personal signatory, but she was a member of the Association at the relevant time, which signed on her behalf. Nothing in the language of section 35(b) requires the written agreement be created to address a specific case rather than a pre-existing agreement.

The actions of the University of Alberta were upheld.

F2005-017 & H2005-001 Calgary Health Region (released June 26, 2006)

The Applicant made an access request to the Calgary Health Region (CHR) for psychological questionnaires in her daughter’s hospital records. The CHR refused to disclose the records under section 11(1)(e) – standardized diagnostic tests or assessments – of the *Health Information Act* (HIA). Prior to inquiry, the CHR also claimed that the FOIP Act exception to disclosure for third party business interests (section 16(1)) applied to the records.

A preliminary issue was raised at inquiry as to whether the Applicant had authority to exercise the rights or powers of her daughter (a minor) under section 104(1) of the HIA.

The Commissioner found that the records contained health information under the HIA and, as such, were carved out of the FOIP Act by virtue of the FOIP Act’s exclusion for health information in section 4(1)(u) (for the reasons discussed in Order F2004-005).

The Commissioner found that the Applicant did not have the authority under section 104(1)(c) of the HIA to exercise her daughter’s right if access. The Applicant failed to prove that the daughter did not understand the nature of her right or power under section 104(1)(b) of the HIA and the consequences of exercising that right or power. Records

written at the time of the request showed that the then 15 ½ year old daughter was a mature minor. The Applicant failed to produce any evidence to the contrary. In his decision, the Commissioner examined the meaning of the word “understand” and canvassed case law and other legislation for their approach to mature minors.

Since the Applicant did not have the authority to exercise her daughter’s right of access, the Commissioner found that he did not have jurisdiction to decide whether the CHR had properly applied the HIA in withholding the records.

F2005-024 David Thompson Health Region (released August 16, 2006)

The Applicant made a request to the David Thompson Health Region for records about himself. The health region did not locate any records responsive to the request. The Applicant appealed the decision of the health region - in particular, the adequacy of the search for records.

The Applicant stated that his wife had also made an access request to the health region for her own personal information. In response, the health region provided her with records that contained several references to him. The Applicant stated that the existence of these records suggested that the health region did not complete an adequate search in response to his request.

The records provided to the Applicant’s wife did contain references to the Applicant, but only indirectly by using the words “he”, “him” and “husband”. The Applicant himself had not had any contact with the David Thompson Health Region.

The Adjudicator reviewed evidence provided by the health region regarding their search process and search methodology. The Adjudicator found that the health region had conducted an adequate search and met its obligations under section 10(1) of the FOIP Act.

OIPC Publications and News Releases

Alberta’s Information and Privacy Commissioner responds to Ryerson study on workplace monitoring

In a recent news release, the Information and Privacy Commissioner responded to a study by Ryerson University into employee monitoring and surveillance. The study, *Under the Radar*, surveyed medium and large private-sector employers about activities such as the use of closed circuit television cameras, email monitoring and GPS tracking of company vehicles.

For a copy of the news release, see <http://www.oipc.ab.ca/home/DetailsPage.cfm?ID=2682>. For a copy of the study, see <http://www.ryerson.ca/faculties/business/news/archive/UnderTheRadar.pdf>.

FOIP Training

Dates for the 2006 – 2007 FOIP training sessions have been set.

The first one-day sessions for Fall 2006 are September 25, 26, and 27 in Edmonton and October 18, 19, and 20 in Calgary. These sessions are for new FOIP Coordinators and employees who are responsible for FOIP.

The first half-day general awareness sessions for Fall 2006 are being held on October 17, 2006 in Calgary and November 20, 2006 in Edmonton. This half-day session is for employees who require a basic overview of the concepts of protection of privacy and access to information.

Arrangements can be made for a training session to be delivered at your workplace or customized to meet the needs of your public body.

The training calendar, registration form and additional information are available at www.foip.gov.ab.ca/dsp_training.cfm.

Review of the *Personal Information Protection Act* (PIPA)

The *Personal Information Protection Act* (PIPA) is currently being reviewed by a Select Special Committee of the Legislative Assembly. The Committee issued a discussion paper in June and is accepting submissions until September 15, 2006. Information regarding the review is available on the Review Committee's web site at www.pipareview.assembly.ab.ca.

Looking for an access and privacy job or employee?

Do you find it difficult to find candidates for access and privacy jobs? Are you looking for new opportunities to use your skills and knowledge? APB has been working with our counterparts across the country to promote a common web site to use to recruit access and privacy professionals, or to assist individuals looking for a job in the field. The Privacy Network portal has recently agreed to add a section to its site for this purpose. Please visit www.theprivacynetwork.org. Click on "Privacy Bootcamp" then "Privacy Careers". You can easily (and at no cost) post a link to a current vacancy by registering with the site. The site also has information of interest on topics ranging from RFIDs to Identity Theft.

Meeting Calendar

Who?	When?	Where?
Municipal – Edmonton Regional FOIP Alliance	Sept 7, 2006	Strathcona County
Health Network	Sept 11, 2006	Edmonton
Post-Secondary FOIP Network	Oct 27, 2006	Olds
School Jurisdiction FOIP Network	Nov 3, 2006	Nisku
Municipal – Edmonton Regional FOIP Alliance	Nov 30, 2006	Strathcona County

Did You Know...

... The International Association of Privacy Professionals (IAPP) will hold its 6th annual *Privacy Academy* conference in Toronto, Ontario on October 18th and 19th, 2006. This will be the first IAPP conference held outside of the United States. For more details, go to the IAPP web site at www.privacyassociation.org.

... As a reminder - the third *Managing Information Assets in the Public Sector* conference will take place on October 12th and 13th, 2006 at the Mayfield Inn and Suites in Edmonton,

Alberta. The speakers and program details will be published on the Information Management web page (www.im.gov.ab.ca) later in 2006.

... Over sixty-one countries around the world have implemented some form of freedom of information legislation, the oldest being Sweden's *Freedom of the Press Act* of 1766. (Source: Wikipedia)

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